



**CALIFORNIA
HIGH-SPEED RAIL
AUTHORITY**

AGENDA ITEM # 7

TO: Chairman Richard and Members of the Board

FROM: Tom Fellenz, Chief Counsel

DATE: March 29, 2012

RE: Consideration of a Resolution to rescind prior Resolution HSRA # 11-11 to comply with Town of Atherton court requirements

Discussion

This agenda item provides for the California High-Speed Rail Authority (Authority) to comply with the final court papers in the litigation, *Town of Atherton, et al., v. California High-Speed Rail Authority, et al.*, Sacramento Superior Court No. 34-2008-80000022 and *Town of Atherton, et al., v. California High-Speed Rail Authority, et al.*, Sacramento Superior Court No. 34-2010-80000679.

Background

On September 2, 2010, the Authority Board adopted Resolution # HSRA 11-11. Through this resolution, the Authority took the following actions:

- (1) certified the 2010 Revised Final Program Environmental Impact Report (EIR) for the Bay Area to Central Valley High-Speed Train System as being in compliance with the California Environmental Quality Act (CEQA);
- (2) adopted Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program as required by CEQA; and
- (3) approved the Pacheco Pass Network Alternative serving San Francisco via San Jose, preferred alignments, and preferred station location options for further study in project-level EIRs.

On October 4, 2010, the Town of Atherton, Planning and Conservation League, City of Menlo Park, Transportation Solutions Defense and Education Fund, and California Rail Foundation, filed a challenge to the Authority's decisions, claiming the Authority failed to comply with CEQA and the court judgment in its prior, 2008 lawsuit (*Atherton 1*). A second lawsuit was filed on October 4,

2010 by the same entities, as well as the City of Palo Alto, Community Coalition on High-Speed Rail, Midpeninsula Residents for Civic Sanity, and Patricia Hogan-Giorni claiming the Authority had failed to comply with CEQA for its Revised Final Program EIR (*Atherton 2*.) In conjunction with certain procedural stipulations, the court considered the two cases together.

On November 11, 2011, the trial court issued a ruling in each case. In the two rulings, the trial court concluded that the Authority's program EIR complied with CEQA in many respects, including its analysis of a reasonable range of alternatives and its reliance on forecasts produced by a ridership model prepared by Cambridge Systematics. The trial court rulings did, however, indicate that the program EIR required corrective work and recirculation in the following areas:

- Recirculation is required to address noise, vibration, and construction impacts of shifting Monterey Highway.
- Recirculation is required to address traffic impacts on surrounding local roads due to narrowing Monterey Highway.
- Recirculation is required to address the impacts of potentially moving freight tracks closer to adjacent land uses along the San Francisco Peninsula.
- Recirculation is required to address impacts of reduced access to surface streets from potential lane closure along the San Francisco Peninsula.

On February 1, 2012, the trial court issued a final order and supplemental writ in *Atherton 1* and a final judgment and writ in *Atherton 2*. On February 13, 2012, these papers were served on the Authority. The two writs direct the Authority to rescind Resolution # HSRA 11-11 and to revise and recirculate the program EIR consistent with the final order/judgment and CEQA prior to making new programmatic decisions. The writs do not direct the Authority to exercise its discretion in any particular way.

To comply with the final judgment, final order, and writs, the Authority must rescind Resolution # HSRA 11-11. The Authority must also complete a Partially Revised Final Program EIR, including responses to comments on the Partially Revised Draft Program EIR that was circulated in January and February 2012. Finally, the Authority must consider the Partially Revised Final Program EIR, and the entire record of proceedings before it, prior to considering whether to certify it as in compliance with CEQA and prior to making any new programmatic decision to approve a network alternative and adopt CEQA findings, a statement of overriding considerations, and a mitigation monitoring and reporting program. The attached draft resolution provides the legal mechanism by which the Authority can comply with one component of the final court papers in *Atherton 1* and *Atherton 2*. If the Authority chooses to adopt the attached resolution, this action will be reported to the Superior Court as evidence of the Authority's effort to comply.

Staff Recommendation: Adopt Resolution

Attachments: Resolution #HSRA 12-14